



To the Honorable Council  
City of Norfolk, Virginia

January 25, 2022

**From:** Richard Broad  
Director of Public Works

**Subject:** Encroachment at 308 E. 40th  
Street

**Reviewed:**

**Ward/Superward:** 2/6

A blue ink signature of Patrick Roberts, Deputy City Manager.

Patrick Roberts, Deputy City  
Manager

**Approved:**

A black ink signature of Dr. Larry H. Filer II, City Manager.

Dr. Larry H. Filer II, City Manager

**Item Number:** C-2

- I. **Recommendation:** Adopt Ordinance
- II. **Applicant:** Richard Hughes and Linda Hughes  
308 E 40<sup>th</sup> Street  
Norfolk, Virginia 23504
- III. **Description:** This agenda item is an ordinance permitting Richard Hughes and Linda Hughes to encroach with a pier in the right of way of Beach Avenue at 308 E 40<sup>th</sup> Street.
- IV. **Analysis:** An encroachment is an object or structure that infringes into the City of Norfolk's (the "City's") rights-of-way or property. *Norfolk City Code*, § 42-10, requires all encroachments into the rights-of-way to be approved by City Council. The encroachment will allow Richard Hughes and Linda Hughes to formally encroach into the right of way of Beach Avenue (paper street) at 308 E 40<sup>th</sup> Street with a 6'x120' wooden pier.
- V. **Financial Impact:** General liability insurance with a limit of not less than \$500,000 each occurrence, \$1,000,000 general aggregate, that shall cover liability arising from premises and/or operations directly associated with this encroachment and listing the City of Norfolk as an additional insured has been provided.

- V. **Financial Impact:** General liability insurance with a limit of not less than \$500,000 each occurrence, \$1,000,000 general aggregate, that shall cover liability arising from premises and/or operations directly associated with this encroachment and listing the City of Norfolk as an additional insured has been provided.
- VI. **Environmental:** There are no known environmental concerns associated with this action.
- VII. **Community Outreach/Notification:** Public notification for this agenda item was conducted through the City of Norfolk's agenda notification process.
- VIII. **Board/Commission Action:** The Department of Public Works, Department of Transit, City Planning, and the City Attorney's Office have reviewed this request for encroachment and offer no objections.
- IX. **Coordination/Outreach:** This letter and ordinance have been coordinated with Department of Public Works and the City Attorney's Office.

**Supporting Material:**

- Exhibit A to Ordinance (PDF)

Form and Correctness Approved: *BAP*

Contents Approved:

By: \_\_\_\_\_  
Office of the City AttorneyBy: \_\_\_\_\_  
DEPT. Public Works

NORFOLK, VIRGINIA

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**Ordinance No.**

AN ORDINANCE GRANTING RICHARD HUGHES AND LINDA HUGHES PERMISSION TO ENCROACH INTO THE RIGHT-OF-WAY OF BEACH AVENUE ADJACENT TO 308 E. 40<sup>TH</sup> STREET WITH A PIER AND APPROVING THE TERMS AND CONDITIONS OF THE LICENSE AGREEMENT.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the terms and conditions of the License Agreement between the City of Norfolk and Richard Hughes and Linda Hughes (the "Hughes"), a copy of which is attached hereto as Exhibit A, are hereby approved, and in accordance therewith, permission is hereby granted to the Hughes to encroach into the right-of-way of Beach Avenue adjacent to 308 E. 40<sup>th</sup> Street with a pier, and for no other purpose.

Section 2:- That the City Manager and other proper officers of the City are hereby authorized to execute the License Agreement and do all things necessary for its implementation.

Section 3:- That the City Manager is further authorized to correct, amend or revise the License Agreement as he may deem advisable consistent with the intent of the Council as expressed therein.

Section 4:- That this ordinance shall be in effect from and after its adoption.

Attachments:

Exhibit A - License Agreement (8 pages)

**LICENSE AGREEMENT**

This **LICENSE AGREEMENT** (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the **CITY OF NORFOLK**, a municipal corporation of the Commonwealth of Virginia (“City”), and **RICHARD HUGHES AND LINDA HUGHES** (the “Hughes”), whose address is 308 E. 40<sup>th</sup> Street, Norfolk, Virginia 23504.

**WITNESSETH:**

1. **ENCROACHMENT AREA:** City hereby grants permission to the Hughes to encroach into a portion of the the right-of-way known as Beach Avenue, located adjacent to and north of the Hughes’s property located at 308 E. 40<sup>th</sup> Street, with a wooden pier, as shown on Exhibit A attached hereto (“Encroachment Area”).

2. **USE:** The Hughes shall be permitted to repair, maintain and occupy the Encroachment Area for purposes of access, shoreline enhancements and pier installation and maintenance as described above and below, and for no other purpose.

3. **LICENSE ONLY; REVOCATION:** It is expressly understood that the permission granted hereby is a license only, conveys no rights to the Encroachment Area, and is revocable by Norfolk City Council at any time in its sole discretion. In the event of such revocation, the Hughes shall immediately remove the encroaching structures and shall cease using the Encroachment Area.

4. **UTILITIES:** At the Hughes’s cost and expense, they are permitted to have utilities installed and maintained in the Encroachment Area. City shall not be responsible for any utilities installed and maintained within the Encroachment Area.

5. **REPAIRS:** The Hughes shall keep and maintain the Encroachment Area in good and complete state of repair and condition. The Hughes shall make all repairs and replacements of every kind to the pier located in the Encroachment Area in order to preserve and maintain the condition of the Encroachment Area. All such repairs and maintenance shall be performed in a good and competent manner, be at least equal in quality and usefulness to the original components, and not diminish the overall value of the Encroachment Area.

6. **REQUIREMENTS OF PUBLIC LAWS:** The Hughes shall suffer no waste or injury to the Encroachment Area and shall comply with all federal, state, and municipal laws, ordinances and regulations applicable to the structure, use, and occupancy of the Encroachment Area. In addition, the Hughes shall be responsible for the correction, prevention and abatement of nuisances, violations or other grievances in, upon or connected with the Encroachment Area.

7. **RIGHT TO ENTER AND CURE:** City shall retain the right to enter upon the Encroachment Area at any time for the purpose of inspecting the Encroachment Area, ascertaining compliance with this Agreement, and making any repairs, which City deems necessary because of any failure of the Hughes to meet their obligations under this Agreement. The cost of any such repairs shall be payable to the City on demand. Any entry upon the Encroachment Area for cure and repair shall be accomplished by City at reasonable times and in the exercise of reasonable

discretion by the City. The making of any repairs by City shall not constitute a waiver by City of any right or remedy upon the Hughes's default in making repairs.

8. **NOTICE**: Any notice shall be in writing and shall be delivered by hand or sent by United States Registered or Certified Mail, postage prepaid, addressed as follows:

City: Office of Economic Development  
Attn: Director  
999 Waterside Drive, Suite 2430  
Norfolk, Virginia 23510

The Hughes: Richard and Linda Hughes  
308 E. 40<sup>th</sup> Street  
Norfolk, Virginia 23504

With copies to: City Attorney  
900 City Hall Building  
810 Union Street  
Norfolk, Virginia 23510

Either party hereto may change their address to which said notice shall be delivered or mailed by giving notice of such change as provided above. Notice shall be deemed given when delivered (if delivered by hand) or when postmarked (if sent properly by mail).

9. **DESTRUCTION**: If the encroaching structure or any part thereof shall be damaged or destroyed by fire, lightning, vandalism, or by any other casualty or cause, such that it cannot be used for its intended purpose, the permission granted hereby shall be automatically terminated unless the parties agree, in writing, to continue to permit the encroachment granted by this Agreement.

10. **NON-LIABILITY OF CITY**: City shall not be liable for any damage or injury which may be sustained by the Hughes or any other person as a consequence of the Hughes's use of the Encroachment Area, or by reason of the elements, or resulting from acts, conduct or omissions on the part of the Hughes, or their agents, employees, guests, licensees, invitees, or on the part of any other person or entity.

11. **ALTERATIONS**: With the exception of the installation and maintenance of utilities (as noted in Section 4 above) the Hughes covenant and agree that they will not make any improvements, changes installations, renovations, additions, or alterations in and about the Encroachment Area without the prior written consent of the City. If the Hughes install or make any improvements, additions, installations, renovations, changes on or to the Encroachment Area with the approval of City, the Hughes hereby agree to remove, if requested by City, any improvements, additions, installations, and renovations, changes on or to the Encroachment Area upon termination of this Agreement. In the event the Hughes fail to remove the improvements, additions, installations, renovations, and changes on or to the Encroachment Area when requested to do so by City, then the City may remove the improvements, additions, installations, renovations, and changes. The Hughes shall be jointly and severally liable for paying for the cost of such removal.

12. **ASSIGNMENT AND SUBLETTING:** City and the Hughes agree that the permission to encroach granted hereby is for the benefit of the Hughes and may not be assigned by the Hughes.

13. **SURRENDER:** The Hughes will surrender possession of the Encroachment Area to City and remove all personal property therefrom upon termination of the permission granted hereby. The Hughes shall return the Encroachment Area to the City in as good order and condition as it was at the beginning of their use of the Encroachment Area.

14. **INSURANCE:** The Hughes shall maintain in full force and effect General Liability (“GL”) insurance with a combined single limit policy of bodily injury, death and property damage insurance of Two Hundred Fifty Thousand and 0/100 Dollars (\$250,000.00) per occurrence and Five Hundred Thousand and 0/100 Dollars (\$500,000.00) general aggregate insuring against all liability arising out of the use, occupancy, or maintenance of the Encroachment Area and appurtenant areas. GL insurance shall be written on an approved ISO form for coverage in the Commonwealth of Virginia, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury, and liability assumed under insured contract. The City, its officers, employees, agents and representatives shall be named as additional insured on any such policy. Coverage shall be evidenced by a Certificate of Insurance provided to the City within thirty (30) days after execution of this Agreement. All insurance policies and certificates shall provide for thirty (30) days advance notice in writing to City if the insurance is cancelled or modified. The Hughes shall inform the City Attorney and the Department of General Services within fifteen (15) days of receiving such notice or cancellation, and immediately obtain coverage compliant with this Agreement.

15. **INDEMNIFICATION:** The Hughes shall indemnify and save harmless City from all fines, penalties, costs, suits, proceedings, liabilities, damages, claims and actions of any kind arising out of the use and occupation of the Encroachment Area by reason of any breach or nonperformance of any covenant or condition of this Agreement by the Hughes’s intentional act or negligence, and not caused in whole or in part by City. This indemnification shall extend to all claims of any person or party for death or injury to persons and damage to any property, and to legal expenses, including reasonable attorney’s fees, incurred by City in the defense of such claims or incurred by City as a result of a breach of any provision of this Agreement by the Hughes, but does not extend to circumstances caused in whole or in part by City.

16. **FIXTURES:** City covenants and agrees that no part of the improvements constructed, erected or placed by the Hughes in the Encroachment Area shall be or become, or be considered as being, affixed to or a part of the City’s property, and any and all provisions and principles of law to the contrary notwithstanding, it being the specific intention of City and the Hughes to covenant and agree that all improvements of every kind and nature constructed, erected or placed by the Hughes in the Encroachment Area shall be and remain the property of the Hughes, unless such improvements are not removed upon termination of this Agreement.

17. **ENVIRONMENTAL:**  
 (a) For purposes of this section:  
 (i) “Hazardous Substances” include any pollutants, dangerous substances, toxic substances, hazardous wastes, hazardous materials or hazardous substances as

defined in or pursuant to the Resource and Conservation Recovery Act (42 U.S.C. § 6901 et seq.) (RCRA), the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 et seq.) (CERCLA) or any other federal, state, or local environmental law, ordinance, rule or regulation.

(ii) “Release” means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, disposing, or dumping.

(iii) “Notice” means any summons, citation, directive, order, claim, litigation, investigation, proceeding, judgment, letter or other communication, written or oral, actual or threatened, from any authority of the Commonwealth of Virginia, the United States Environmental Protection Agency (USEPA) or other federal, state or local agency or authority, or any other entity or any individual, concerning any intentional act or omission resulting or which may result in the Release of Hazardous Substances into the waters or onto the lands of the Commonwealth of Virginia, or into waters outside the jurisdiction of the Commonwealth of Virginia or into the “environment,” as such terms are defined in CERCLA. “Notice” shall include the imposition of any lien on any real property, personal property or revenues of the Hughes, including but not limited to the Hughes’s interest in the Encroachment Area or any of the Hughes’s property located thereon, or any violation of federal, state or local environmental laws, ordinances, rules, regulations, governmental actions, orders or permits, or any knowledge, after due inquiry and investigation, or any facts which could give rise to any of the above.

(b) The Hughes shall comply with all applicable federal, state, and local environmental laws, ordinances, rules and regulations, and shall obtain and comply with all permits required thereunder, as well as under any successor or new environmental laws. Upon the receipt of any Notice, the Hughes shall notify City promptly in writing, detailing all relevant facts and circumstances relating to the Notice.

(c) The requirements of this section shall apply to any successor in interest to the Hughes.

(d) The Hughes hereby agree to defend (with counsel satisfactory to City), indemnify and hold City harmless from and against any and all claims, losses, liabilities, damages and expenses (including, without limitation, reasonable cleanup costs and attorney’s fees arising under this indemnity) which may arise directly or indirectly from any use or Release of Hazardous Substances in the Encroachment Area and losses and claims against City resulting from the Hughes’s failure to comply strictly with the provisions of this section. The provisions of this section shall survive the termination of this permission granted by this Agreement.

18. **LIENS OR ENCUMBRANCES:** If because of any act or omission of the Hughes any mechanic’s lien or other lien, charge or order for the payment of money shall be filed against any portion of the Encroachment Area, the Hughes shall, at their own cost and expense, cause the same to be discharged of record or bonded within ninety (90) days after written notice from the City to the Hughes of the filing thereof, and the Hughes shall have the right to contest the validity of such lien if they so choose.

19. **APPLICABLE LAW:** The permission granted by this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. Any

suit or legal proceeding relating to permission granted hereby shall be brought only in the state or federal courts located in Norfolk, Virginia.

20. **WAIVER OF TRIAL BY JURY:** To the extent permitted by law, City and the Hughes mutually waive their rights to trial by jury in any action, proceeding, or counterclaim brought by either party against the other with respect to any dispute or claim arising out of the permission to encroach granted to the Hughes by this Agreement.

21. **TITLES AND HEADINGS:** Titles and headings are inserted in this Agreement for reference purposes only and shall not be used to interpret the Agreement.

22. **SEVERABILITY:** Each provision of this Agreement must be interpreted in a way that is valid under applicable law. In the event that any provision or portion of this Agreement is determined by a court of competent jurisdiction to be void, invalid, or otherwise unenforceable, such provision or portion shall be deemed reformed, insofar as is possible, to cure the defect and give maximum effect to the intent of the City and the Hughes entering into this Agreement, and in any event the remainder of the Agreement shall continue in full force and effect.

23. **ENTIRE UNDERSTANDING:** This Agreement constitutes the entire understanding between or on behalf of the City and the Hughes and supersedes any prior understandings and/or written or oral agreements between them or on their behalf respecting the subject matter herein. There are no representations, agreements, arrangements, or understandings, oral or written, between and among the parties hereto relating to the subject matter of this Agreement, which are not fully expressed herein.

This Agreement may be modified or amended only by a writing signed and dated by both parties. All amendments shall be incorporated and made a part of this Agreement and attached hereto.

24. **AUTHORITY TO EXECUTE:** The terms of this Agreement are contractual and not mere recital, and the individuals executing this Agreement hereby represent and warrant that they have full and complete authority to covenant and agree as herein provided and to execute this Agreement on behalf of the parties hereto.

25. **COUNTERPARTS:** The Agreement may be signed in counterparts. The parties hereto agree that facsimile or email signatures shall have the full force and effect of original signatures.

**IN WITNESS WHEREOF,** the parties hereto have executed or have caused this License Agreement to be executed by their duly authorized officers and their corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

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**RICHARD HUGHES**

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**LINDA HUGHES**



**CITY OF NORFOLK**

By: \_\_\_\_\_  
City Manager

Attest:

\_\_\_\_\_  
City Clerk

**Approved as to Contents:**

\_\_\_\_\_  
Director of Public Works

**Approved as to Form and Correctness**

\_\_\_\_\_  
Assistant City Attorney

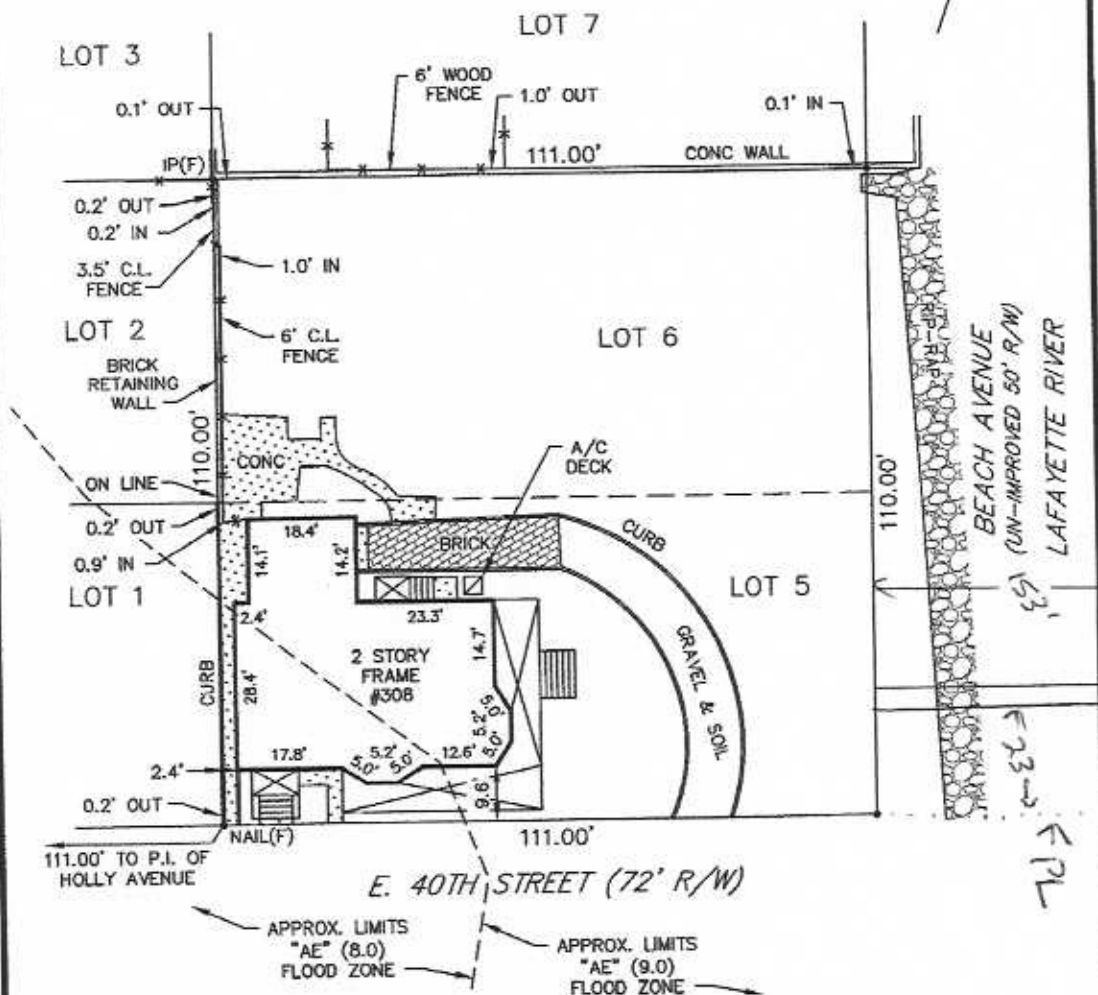
Attachment: Exhibit A to Ordinance (Encroachment at 308 E. 40th Street)

THIS IS TO CERTIFY THAT I, ON NOV. 3, 2021, SURVEYED THE PROPERTY SHOWN HEREON AND THAT THE TITLE LINES AND PHYSICAL IMPROVEMENTS ARE AS SHOWN HEREON. THE IMPROVEMENTS STAND STRICTLY WITHIN THE TITLE LINES AND THERE ARE NO ENCROACHMENTS OF OTHER BUILDINGS EXCEPT AS SHOWN.

SIGNED: *D.H. Holmes*

**NOTES:**

- 1) THE PROPERTY SHOWN HEREON APPEARS TO LIE IN "AE" (8.0 & 9.0) FLOOD ZONE ACCORDING TO F.E.M.A. MAP PANEL NO. 510104-0019H REVISED FEB. 17, 2017.
- 2) THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT, AND MAY NOT SHOW ANY/ALL EASEMENTS AFFECTING THE PROPERTY.
- 3) THIS DRAWING IS MADE TO THE ORIGINAL PURCHASER OF THE SURVEY, AND IS NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS.



PHYSICAL SURVEY  
OF  
LOTS 5 & 6, BLOCK H  
RIVERVIEW PARK  
NORFOLK, VIRGINIA  
FOR  
LINDA M. HUGHES AND  
RICHARD D. HUGHES

DATE: NOV. 3, 2021  
SCALE: 1" = 25'  
NOTE: FOR PLAT SEE  
M.B. 5 PG. 58  
CHESAPEAKE, VA

**WARD M. HOLMES**  
**LAND SURVEYOR, P.C.**  
9225 GRANBY STREET  
NORFOLK, VA 23503  
PHONE: 757-480-1230  
FAX: 757-583-7390



DRAWN BY: WTL

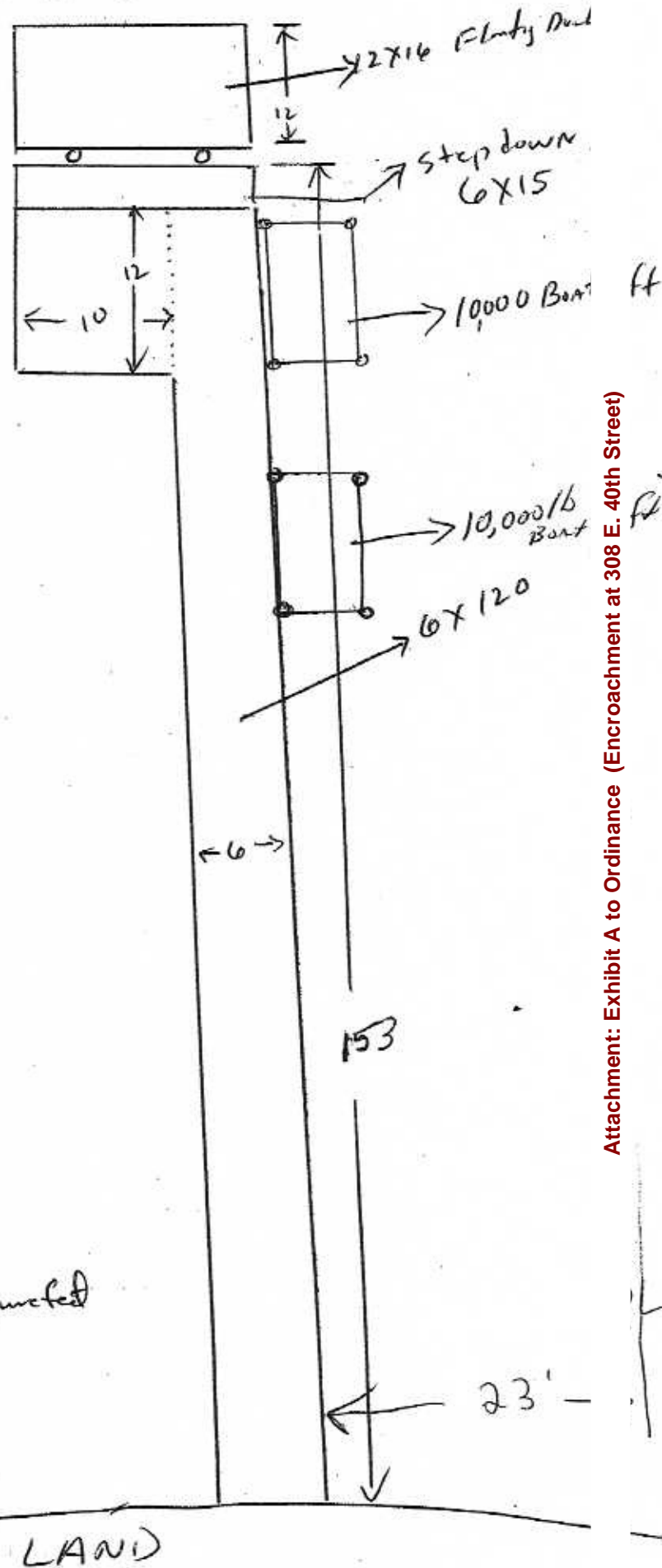
PROJECT NO. 21-761

1055/87

(320)

Attachment: Exhibit A to Ordinance (Encroachment at 308 E. 40th Street)

Hughes  
308 EAST 40<sup>th</sup> Street



For UMRC

12x16 - Platform	192
6x15 - Step down	90
12x9 1/2 - Platform	114
	<u>396</u>
	total squared